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ADMINISTRATION AND CONGRESS TO HOLD EMERGENCY CONSULTATIONS ON FY 89 REFUGEE ADMISSIONS

The Bush Administration will hold emergency consultations with Congress, perhaps as early as the first week in April, to address the need for additional refugee admissions from the Soviet Union, government and congressional sources have revealed. The numbers of Jews, Armenians, Christian Pentecostals, and other groups leaving the Soviet Union are nearly double what they were last year, and have far outpaced the U.S. government's budgetary and admissions levels in the current fiscal year.

While there is strong support in Congress for an increase in Soviet refugee admissions in FY 89, the most pressing question appears to be how to pay for it.

In a hearing before a House subcommittee on March 14, Secretary of State James A. Baker 3rd announced that the State Department was seeking $100 million in supplemental funding for the resettlement of additional numbers of Jews and other refugees from the Soviet Union in FY 89.

Appearing before the House Appropriations Subcommittee on Foreign Operations, Baker said, "Maybe I'm announcing something that I'm not supposed to announce here, but we are going to request an additional $100 million for 1989 because we can't make it" with the money or numbers that are currently available.

The following day, Press Secretary Marlin Fitzwater confirmed the news, but said that an FY 89 supplemental request was "still under review." A State Department official told The New York Times that a request probably would be sent to Congress before the end of March. If approved, $85 million of the new funding would go for refugee admissions and $15 million would be allocated for refugee relief and assistance overseas, Fitzwater said.

The Bush Administration will seek emergency consultations with Congress to increase the refugee admissions ceiling for the Soviet Union, Fitzwater indicated, although he would not specify a number. "The request at this point is for additional appropriations which would accommodate a higher ceiling to be determined later," he said. "But we've got to make sure that we have the funding before we can go ahead with

IN THIS ISSUE:

U.S. policymakers are now responding to a sharp increase in emigration from the Soviet Union, which, as yet, is not matched by sufficient funding to admit additional numbers as refugees to the United States. Court Robinson looks at several initiatives to increase refugee admissions and to come up with money to pay for them. He explores the potential effects of these efforts on other programs...1

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the ceiling increase."

Government and congressional sources told Refugee Reports that an increase of 25,000 was a likely proposal, which would double the current Soviet ceiling.

Last December, the FY 89 admissions ceiling for Soviet refugees was raised from its original level of 18,000 to 25,000. Of these, 19,000 admissions slots are budgeted for full funding by the federal government, which covers transportation, initial reception and placement costs, and domestic resettlement services. The remaining numbers are only partially funded. Because their use requires private funding for transportation and sponsorship services, there is considerable uncertainty that these numbers will be drawn on this year.

Of the fully funded refugee numbers now available for Soviet admissions in FY 89, 5,000 have been allocated for applicants in Moscow and 14,000 for those who leave the country with immigrant visas and apply for entry to the United States when they reach Rome. Most of the applicants in Moscow are Armenian, while 80 percent of those in Rome are Soviet Jews.

The backlog of applications in Moscow has reached 19,000, Fitzwater said, and 7,000 people in Rome are awaiting entry into the United States.

With applications for refugee status in Rome averaging between 4,000 and 5,000 per month, and with 10,000 of the 14,000 allocated, fully funded numbers already used up this year, U.S. admissions from Rome will come to a halt some time near the end of April, officials say.

"If additional funding is not found by next month," wrote Sens. Edward M. Kennedy (D-Mass.) and Robert W. Kasten, Jr. (R-Wis.) in a March 1 letter to their fellow senators, "refugees will be turned back, left to languish in Rome at great cost in care and maintenance, and the voluntary agencies involved in the program will be forced to close down."

Kennedy, Kasten Propose Alternate Source of Admissions and Resettlement Funds Given the concern about the huge federal budget deficit, some members of Congress are seeking to accommodate additional admissions numbers and resettlement costs while avoiding the need for supplemental funding. Chairman of the Subcommittee on Immigration and Refugee Affairs of the Judiciary Committee, Kennedy said, "We are prepared to use the emergency provisions of the Refugee Act to provide the additional admissions numbers, but this is only half the problem. The equally important other half is adequate funding for their processing and resettlement."

On March 1, Kennedy and Kasten introduced legislation (S. 489) that would transfer $200 million in unobligated funds from the State Legalization Impact Assistance Grant (SLIAG) program in order to cover the costs of admitting an additional 25,000 Soviet Jews and other refugees in FY 89.

Of these funds, $150 million would be shifted to Department of States' Emergency Refugee and Migration Assistance fund for both admissions and resettlement and for overseas relief and assistance. The remaining $50 million would go to the Office of Refugee Resettlement (ORR) to pay for domestic resettlement services through the voluntary agency matching grant program.

The Immigration Reform and Control Act of 1986 (IRCA), under which nearly 3 million undocumented aliens and seasonal agricultural workers in the United States have been able to legalize their status, also provided $1 billion in funds for each of four successive years beginning in FY 88 "to alleviate the financial impact of State and local governments that may result from the adjustment of immigration status...of certain groups of aliens."

The Bush Administration has proposed to rescind $300 million in SLIAG funding in FY 90, and another $300 million in FY 91. A report from the Congressional Budget Office indicates that less than $70 million of SLIAG money will be spent in FY 89.

"Clearly, longer-term solutions must be found to deal with Soviet migration," Kennedy and Kasten wrote, "but if we do not respond now to this emergency, we will be turning our backs to our longstanding commitment to assist Soviet refugees."

State Goverments, Hispanic Groups Sympathize, But Object to SLIAG Cuts While winning applause as an effort to assist refugees, the Kennedy/Kasten bill has drawn criticism from state governments and from advocacy groups working with undocumented and newly legalized aliens.

"It is a big mistake, and anyway much

too early, to say that states will not spend the legalization money," said Nancy Wittenberg, state refugee coordinator for Florida. "Those costs are out there," she told Refugee Reports. "It is just taking time to identify them."

"SLIAG is a new program with a slow starting time," Wittenberg said. Federal guidelines for the program regarding the documentation and recovery of costs, moreover, were "burdensome, complex, and almost a year late."

Mark Helmar, assistant secretary for program and fiscal affairs in California's Health and Welfare Agency, said, "We strongly resist any attempts to reduce SLIAG on a permanent basis." He predicted that, in a five-year period beginning in 1988, state and local governments would spend all the legalization money that currently was available.

"Congress has been getting erroneous information about this program," Helmar told Refugee Reports. "Service delivery--and costs too--becomes much heavier in the third and fourth years of the program," particularly in the areas of public health and education, as newly legalized aliens begin to adjust their status from temporary resident to permanent resident status.

"We are in complete sympathy with the plight of Soviets and other refugees," said Cecilia Munoz, immigration policy analyst with the National Council of La Raza, "but we are concerned that SLIAG funds should stay in the arena of IRCA-related activities. There are plenty of uses for these funds."

Jerry Tinker, staff counsel for the Senate Subcommittee on Immigration and Refugee Affairs, acknowledged that states had legitimate complaints about the SLIAG program as it is currently structured, but he wondered whether the full funding would be necessary. "No one had any idea what the costs would be when this money was appropriated. The $1 billion per year figure was just pulled out of the air."

The primary impetus for the Kennedy/Kasten bill, suggested Tinker, was a feeling that something should be done quickly to respond to the need for additional numbers and funding in the Soviet refugee program. "We didn't want to be accused of sleeping at the switch," he said. Besides, "if states can show they need it, we can always restore this money down the line."

Berman Bill Would Offer Guaranteed Payback

Rep. Howard Berman (D-Cal.) is expected shortly to introduce alternative legislation to the Kennedy/Kasten bill that should prove more popular with state governments and other supporters of the SLIAG program. Under the proposed Berman bill, $100 million of SLIAG money would be transferred temporarily to provide for additional refugee admissions in FY 89. The bill would return the money to the SLIAG program in FY 91.

"When Congress passed IRCA in 1986, we didn't just authorize funding for the SLIAG program. We also appropriated the money" for fiscal years 1988 through 1991, said Bari Schwartz, Berman's legislative director. "The Berman bill would borrow $100 million from SLIAG in FY89 and dedicate that money to refugee admissions," she told Refugee Reports. But unlike the Kennedy/Kasten bill, the Berman proposal would provide for a restoration of the funds by amending the immigration reform act to appropriate $1.1 billion for SLIAG in FY 91.

Schwartz described Berman's approach as "four-pronged." In addition to borrowing and then replenishing SLIAG funding, the bill would call for specific numerical increases in regional refugee ceilings for FY 89. Although the numbers were not final, Schwartz suggested that the Berman bill would not only mandate an increase in the Soviet ceiling, but also would restore the cuts made earlier in the fiscal year in Southeast Asia and the Near East.

Last December, the Administration provided an additional 7,000 admissions slots to the Soviet Union by shifting 5,500 admissions numbers from the Orderly Departure Program, 1,000 from the Southeast Asia first-asylum ceiling, and another 500 from the Near East/South Asia. Of the total, 3,000 were fully funded and the rest were partially funded.

The Berman bill would also expand the use of SLIAG funds to provide for additional outreach and anti-discrimination activities that are not allowable under current program guidelines.

"The key to the Berman bill is the payback," said Rick Swartz, president of the National Immigration, Refugee and Citizenship Forum. "States would have a guarantee that the SLIAG money is returned in FY 91."

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California's Helmar called the Berman bill "the kind of proposal that is worth looking at seriously."

According to several refugee advocates, the Berman bill offers another advantage over the Kennedy/Kasten measure. By ensuring that SLIAG funds are only borrowed and not removed, the Berman bill would prevent antagonisms developing between the Hispanic and Jewish communities.

"We are committed to finding a solution that will respond to the emergency for Soviet Jews without hurting anyone else," said Ellen Witman, legislative director for the Council of Jewish Federations. She promised that once the Berman bill is introduced, "extensive lobbying efforts on its behalf will be undertaken" by her organization.

Also, Swartz told Refugee Reports, "this is borrowed money, not new money," which could make the proposal more attractive to Congress than a supplemental appropriation.

"I don't know if they have the votes" in Congress for a supplemental, said Tinker, despite the support for Soviet Jews. Reprogramming existing funds seemed more likely, he said. "But the money doesn't have to come from SLIAG. One wing of a B-1 bomber would pay for the whole refugee program."

Money, Numbers For Next Year Seen As Too Low Even before Congress has addressed the fiscal and numerical shortfalls in FY 89, concerns are being raised about the adequacy of FY 90 levels, particularly for the Soviet

Union.

Sen. Patrick J. Leahy (D-Vt.), chairman of the Foreign Operations Appropriations Subcommittee, speaking in support of the Kennedy/Kasten legislation, noted that the Administration is seeking only about $370 million for refugee and migration assistance in FY 90.

"This request is totally inadequate to the needs," he said. "It may be as much as $100 to $150 million too low," given that 25,000 admissions spots are allocated to the Soviet Union out of a worldwide ceiling of 84,000, while some estimates suggest that 40,000 to 60,000 numbers may be needed for the Soviet ceiling alone next year.

Update

° The six-member Association of Southeast Asian Nations (ASEAN) has announced that, as of March 14, Vietnamese asylum-seekers arriving in Southeast Asian countries will no longer be automatically eligible for resettlement in third countries. Instead, their status "will be determined after screening procedures have been instituted in the context of arrangements to be agreed upon at the International Conference" scheduled in Geneva on June 13 and 14, according to an ASEAN statement released by the Malaysian Ministry of Foreign Affairs.

On March 7-9, Malaysia hosted an international conference on Indochinese refugees, which was held under the auspices of the UN High Commissioner for Refugees (UNHCR) and attended by 28 nations, including Vietnam and Laos. Government representatives unanimously endorsed a draft proposal for a comprehensive plan of action to respond to the continuing outflow of Vietnamese boat people, now in its 14th year.

The basic outline of the proposal, according to a report from two U.S. members of the International Council of Voluntary Agencies (ICVA) who attended the Malaysia conference as observers, includes:

1. humane measures to deter clandestine departures.
2. promotion of emigration from Vietnam through regular departure procedures and migration programs.
3. temporary refuge to all asylum seekers.
4. early establishment of a consistent, region-wide refugee status determination process, with guidance from UNHCR.
5. continued, and if possible, expanded resettlement of refugees and long-stayers.
6. voluntary repatriation of persons determined not to be refugees.

Although screening programs are not likely to be implemented before the Geneva conference in June, ASEAN officials decided to implement an immediate cut-off date "in order to deter a mass exodus from Vietnam" in the interval between the two meetings, the ASEAN statement said.

The U.S. representative at the Kuala Lumpur meeting, Ambassador Jonathan Moore, reportedly had urged that no cut-off date be announced until screening procedures had been implemented and commitments were in place to expand the Orderly Departure Program.

An ICVA statement presented in Malaysia specified several safeguards that should be included in regional screening programs, including: "the use of a carefully worded questionnaire that would assist in developing instances of possible past persecution as well as possible reasons to fear future persecutions; guaranteeing applicants legal counsel or assistance; maintaining a record of the proceedings to facilitate appeal and monitoring; and assuring a major role for the UNHCR."

According to a report by Agence France-Presse, the draft plan of action states that those screened out as unqualified for refugee status would be placed in a regional holding center run by UNHCR until they return home. "The preference of the ASEAN states is to have the holding center outside their territories," said Kopsak Chutikun, deputy director-general of the Thai Foreign Ministry's Political Department, in order to "reduce domestic discontent about the presence of a large number of refugees."

The U.S. members of the ICVA delegation were Robert DeVecchi, executive director of the International Rescue Committee, and Monsignor Nicholas DiMarzio, executive director of Migration and Refugee Services of the U.S. Catholic Conference.

° Jewel S. Lafontant has been named U.S. Coordinator for Refugee Affairs, replacing Ambassador Jonathan Moore. Lafontant was a senior partner in a Chicago law firm and deputy solicitor general in the Nixon Administration.

° Hundreds of refugees are crossing into Pakistan every day, most fleeing the capital city of Kabul, but also reportedly from Jalalabad, the capital of Nangarhar Province. Many observers see this as the verge of a major guerrilla offensive to defeat the Soviet-installed regime of Najibullah. As many as 39,000 Afghan refugees have crossed into Pakistan in the past three months, and as many as 100,000 more are expected in the next several months, according to the March 5 Washington Post. Many of those fleeing at this time are the relatives of government supporters, according to press reports.

° A first group of 75 Vietnamese boat people voluntarily repatriated from Hong Kong, arriving in Hanoi March 2.

Upon arrival, the Boeing 737 was met by Nguyen Can, a high-ranking Interior Ministry official, who said, "Normally you would be punished, but because you have recognized your error...you will benefit from a policy of leniency." But, Nguyen Can warned, "Those of you who try to flee again will be severely punished." The return was reported by the March 3 Washington Post.

In Hong Kong, Mike Hanson, refugee coordinator, said, "Channels of repatriation are now open and we hope more people would use them. People will realize that the only options are to remain in our camps or return to Vietnam."

° East German guards shot and killed a 20-year-old East German attempting to scale the Berlin Wall on February 5, the first confirmed killing of a would-be refugee since November 1986. Several other shooting incidents at the Berlin Wall have been reported recently, indicating an end to the no-shooting policy in effect since late 1987 (see Refugee Reports, Vol. VIII, No. 12). More than 175 people have been shot and killed trying to cross from East to West Germany since the Berlin Wall went up in 1961. Hundreds of thousands of East Germans have reportedly applied to emigrate.

Recent Developments

JEWS, PENTECOSTALS CHALLENGE INS DENIALS OF REFUGEE STATUS FOR SOVIET EMIGRES

Two recent reports by voluntary agencies challenge Immigration and Naturalization Service (INS) denials of refugee status to Soviet Jews and Christians in Rome who hope to be admitted to the United States under the U.S. overseas refugee admissions program.

World Relief, the assistance arm of the National Association of Evangelicals, sent a task force to Rome in January to review the cases of 99 Pentecostals denied refugee status, and issued a report of their findings on February 17. The Hebrew Immigrant Aid Society (HIAS) issued its own report February 10, reviewing the cases of 683 Soviet Jews in Rome who were similarly denied refugee status.

Until recently, emigres from the Soviet Union have received U.S. refugee status almost automatically. In FY 88, the INS approval rate for Soviets was 99 percent. But by mid-1988, that changed.

The pressure of more people asking to emigrate and being granted exit visas by the Soviet authorities, combined with budget constraints on the U.S. side, created a receptive climate for the asking of critical questions about whether all Soviet applicants had bona fide claims to refugee status or whether other mechanisms for their admission to the United States could be found.

A leaked memo of a meeting between State and Justice Department officials raising doubts about the legitimacy of INS interviewing of Soviet refugees in Rome and specifically questioning the claims of Soviet Armenians hit the front page of the New York Times on May 29, 1988 (see Refugee Reports, Vol. IX, No. 6).

On July 13, 1988, the National Security Council met to discuss the problem. An August 4 follow-up letter to National Security Advisor Lt. Gen. Colin Powell from then-Attorney General Edwin Meese said, "Current practices in processing Soviet emigres appear not to conform with the requirements established by the Immigration and

Nationality Act of 1980" and that "procedures followed by the Embassy in Moscow must be brought into sync with INS procedures."

Meese dispatched two INS officers to Moscow at that time. INS officers were directed to "be as generous as possible in their application of the refugee definition" and to give applicants "all possible assistance in articulating their claims."

On November 17, then-Secretary of State George Shultz asked the new Attorney General, Dick Thornburgh, to apply the uniform standard for refugee determination--a "well-founded fear of persecution"--in Rome and Moscow.

Denials Rise The first denials of Jewish applicants in Rome began in September. From September until the end of December, about eight percent of all Soviet Jews applying at the INS office in Rome had their applications denied. In January 1989, the percentage of denials more than doubled. Between September 1988 and February 1989, the INS denied refugee status to more than 650 Soviet Jews, according to the HIAS report.

World Relief reported that more than 150 Soviet Christians had their applications denied during roughly the same period. Percentages of denials varied from week to week, but averaged about 10 percent.

Parole is Offered, But Not Accepted On December 8, in response to growing numbers of refugee status denials, Thornburgh announced that he had expanded his parole authority to admit up to 2,000 Soviet emigres per month from Moscow, plus all Soviet emigres in Rome, who could not be admitted as refugees.

Those who enter the United States under "public interest parole" are not entitled to receive refugee travel, medical, and resettlement benefits and are not, as yet, given the option of adjusting their status to that of a permanent resident. Parolees do, however, receive work authorization and the same benefits and protections under the law as permanent residents. Historically, groups admitted under the Attorney General's parole authority have eventually been able to adjust their status through specific legislative initiatives, and government sources indicate that there is no reason that Soviet parolees would not eventually have the same option.

Nevertheless, HIAS insists that parole is not a viable option at this time for Soviet Jews. The HIAS report says, "Soviet Jews are keenly aware of the inferior status conferred by parole; they are unwilling to accept this status particularly because it means they cannot become permanent residents. Following the recommendation of the Rome office of HIAS, the denied applicants reject the offer of parole and instead request reconsideration of their applications." The report says that they continue to live in Rome, hoping that they will be granted refugee status on reconsideration or that there will be a change in U.S. policy.

Fairness, Completeness of INS Interviews Questioned The World Relief team critiqued INS interviewing procedures, finding wide discrepancies in approval rates from one INS examiner to the next and finding the interviews generally to be superficial and, in some cases, hostile to the applicants.

Lynn Buzzard, chairman of the task force and an associate professor of law at Campbell University College of Law, wrote to the INS district director in Rome saying, "Some cases where a denial would have seemed arguably valid were approved with apparently little inquiry. Others with long patterns of persecution were denied. Persons in the same church community and even in the same family group were treated disparately with no apparent reason, except that the interview was by a different case officer." Buzzard pointed out that more than 80 percent of the denials in motions for reconsideration appeared to have come from one case officer.

The World Relief report found that interviews averaged no more than 10 minutes in length, including translation time, and that the interviewing style is "abrupt, cold, formal, and mechanical." This, said the report, "destroys any potential for a sense of trust essential to effective communication of the highly personal information about the applicant's religious life and persecution."

The task force observed INS interviews. In one, the report noted that the interviewer never looked at the applicant. Rather, he spent the interview shuffling papers and talking to the translator. The applicants, the report found, have little

idea of what information the interview is intended to elicit or the importance of the interview to refugee determination. "The interviewing process, as observed and reported, on no occasion invited the applicant to make any statement in support of his or her case for refugee status," the report noted. "All the questions were specific and direct. In some instances, attempts by applicants to present their 'story' were specifically cut off." The task force reported, "A near universal sense among applicants, whether accepted or rejected, was that they never really had an opportunity to speak."

World Relief charged personal bias on the part of INS officers, "either against the refugees generally or the Soviet Pentecostals in particular." Questions probing religious knowledge were said to be demeaning, and one interviewer "on frequent occasions belittled the experiences related to the applicant."

The report points out that Soviet Pentecostals have survived by exercising caution in revealing information about their lives and beliefs. It noted that the interviewing process compounds the natural reluctance of the refugees to speak.

Do Soviet Emigres Meet Well-Founded Fear of Persecution Standard? The U.S. statutory standard for admitting a refugee (or granting political asylum) is a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

The text of standard denial letters issued by the INS office in Rome states, "Although there is no question that the applicant was subject to a certain amount of discrimination, the facts presented are not sufficient to determine that the discrimination was so severe as to place 'serious restrictions' on his ability to become educated, to earn a living or practice his religion."

In his letter to the INS Rome district director, Buzzard said, "Without applying any presumptions of persecution, and without regard to whether one applies the 'well-founded fear of persecution' in a liberal or more restrictive manner, these applicants clearly meet the test."

The letter noted a pattern of persecution in many cases stretching back three generations, including harassment of Pentecostal churches, pressures on children to abandon their faith, and systematic job discrimination. "The styles of harassment may vary, and the intensity fluctuate, but the oppression and denial of rights persist."

Questions by INS examiners tended to focus on very recent incidents of physical persecution, such as arrests. "While such incidents are, of course, very persuasive evidence," said Buzzard, "it is clear that a well-founded fear doesn't require either very recent incidents or particularly striking personal incidents."

The HIAS report analyzes the standard denial letters issued by the INS office in Rome. It charges that the letters' focus on the severity of discrimination is contrary to the more liberal standard of a "reasonable person's" fear of persecution as affirmed by the Supreme Court in the Cardoza-Fonseca case (see Refugee Reports, Vol. VIII, Nos. 3 and 7). "For most Soviet Jews," said the report, "the memory of previous waves of toleration followed by persecution is still fresh in their minds. They believe that if tensions within the Soviet government or between the Soviets and the West change, then the Jews could be in the same circumstances they were in under the Tsars, Stalin, or Khrushchev. The memories of the pograms, of the Pale, of the Ukraine, and of Stalin do not fade." Given the unpredictable nature of the treatment of Jews in the Soviet Union, the report concludes that "it is reasonable for Soviet Jews to fear persecution on account of their religion if they return."

The HIAS report charges that INS is using a narrower standard. "INS Rome applies the guidelines set out in the Handbook [UN Handbook on Procedures and Criteria for Determining Refugee Status] in an extremely narrow and selective fashion with an eye toward denial only," the report contends.

The World Relief report holds that "persecution in a modern totalitarian state is rarely the type that includes overt beatings and imprisonment, specific examples which INS officers appear to be looking for." The report says that "the discrimination is more subtle, though more pervasive," infecting the entire culture and weighing cumulatively on the persecuted minority. "INS Guidelines

and court decisions," the report argues, "clearly recognize that persecution may be found in such cumulative practices even when no single experience might rise to the level of persecution, but this standard is not applied."

Presumptive Eligibility HIAS contends that Soviet Jews should be given a presumption of eligibility for refugee status based on the pattern of persecution directed against them. "The notion of applying a 'presumption of persecution' to the situation of Soviet Jews is hardly a revolutionary idea," said the report. "There is a precedent for it in the case of refugees from Indochina and, indeed, precedent in the operation of an informal presumption in favor of Soviet Jews up until last fall."

Applying such a presumption would shift the burden of proof on the applicant, says the HIAS report. Soviet Jews would still undergo individual interviews, but once they proved membership in the social group (i.e., of Soviet Jews) the INS officer would assume that they were "refugees" unless that assumption was rebutted by persuasive evidence to the contrary.

HOUSE HEARING EXAMINES U.S. ASYLUM POLICY OPTIONS

In his debut as chairman of the House Subcommittee on Immigration, Refugees, and International Law, Rep. Bruce A. Morrison (D-Conn.) signaled an active and involved role for the subcommittee in U.S. asylum policy. The March 9 hearing on that subject featured six panels of witnesses, the participation of 11 members of Congress, and a packed hearing room.

Alan C. Nelson, commissioner of the Immigration and Naturalization Service (INS), said that more than 30,000 asylum applications had been filed in Harlingen, Texas between June 1 and December 31, 1988, 96 percent of which were from Central Americans. Nicaraguans accounted for 52 percent of the Central American applicants; Salvadorans, 24 percent; Guatemalans, 12 percent; and Hondurans, 12 percent.

Nelson attributed the seven-fold increase in asylum applications over the past four years to the employer sanctions provisions of the Immigration Reform and Control Act (IRCA), which has made it increasingly difficult for undocumented aliens to find employment, so that "the work authorization which has become associated with an asylum claim has in itself become a goal for many Central Americans."

"Most of the Central American arrivals appear to be economic migrants rather than applicants who seek refuge from political persecution," he said.

He said the the Supreme Court's Cardoza-Fonseca decision, which he characterized as relaxing the standard used to decide asylum cases, also increased the attractiveness of the asylum option.

In response to the influx of "the widespread abuse of asylum as a means to enter the United States," Nelson outlined the INS enforcement plan that went into effect February 21 (see also, Refugee Reports, Vol. X, No. 2):

- increased Border Patrol activity;
- expeditious processing of asylum applications at the port of entry;
- for aliens in the U.S. illegally who apply at Harlingen, fair and expeditious adjudication of asylum claims and, if the claims are denied, issuance of orders to show cause and warrants of arrest, and ultimately, deportation, if ineligible for any relief;
- Detail of necessary INS, Department of State, and Executive Office of Immigration Review staff.

Nelson said that although the average processing time for an asylum application in the Harlingen district has been reduced to one day, "no step in the normal adjudication process has been omitted."

As of March 6, 2,567 aliens were in detention pending completion of their deportation hearings. Since February 21, 182 orders of deportation had been entered, of which 103 had been executed, Nelson said.

Nelson also reported a drastic fall off of "walk-in" asylum applicants. During the period the temporary restraining order was in effect--allowing asylum applicants to file in Harlingen and continue on to destinations within the interior of the United States--applications averaged 454 per day. From February 21 to March 6 the average dipped to 43.5 per day.

Morrison questioned the growing numbers of Central Americans in detention in south

Border Patrol officer listens to detainees at INS facility in Bayview, Texas. At the time of the hearing, 2,567 persons were detained. *Frank Johnston, Washington Post*

Texas, saying, "It looks to me like an impending disaster."

Nelson said that he would not characterize the situation as an immigration emergency, and he suggested that there has been a drop in recent arrivals. He also said that military facilities might be used to house detainees, if necessary.

Pro Forma Advisory Opinions Morrison challenged the contention that applicants are receiving individual attention. He noted that in 350 of 400 cases, State Department Bureau for Human Rights and Humanitarian Affairs (BHRHA) personnel stationed at the Port Isabel facility in south Texas appended a yellow sticker onto the application form saying that it did not have specific information on the applicant and referring to the BHRHA's human rights report on the country of origin. He called it "a travesty of justice."

Paula Dobriansky of BHRHA testified that "we do not have a nation-specific approach, but rather apply the same standards to aliens from all countries, including those from El Salvador and Nicaragua."

She said that most of the Central American asylum applicants "in their written applications make only vague and generalized claims of persecution such as 'the guerrillas will kill me' or 'I don't like Communists.'" She said that they usually fail to provide substantiation of their persecution claims. Dobriansky said, "INS experience to date indicates that 98 percent of the Central American applicants do not have valid asylum claims." She said that many of the applicants write frankly that they have come in search of employment, and said that nearly 500 recent applicants submitted identical, all-purpose applications. She said that appending the yellow sticker in such cases was justified since the applications themselves in so many cases were identical.

When pressed on the discrepancy in asylum approval rates for Nicaraguans and Salvadorans (the former, approved at a rate of 53.1 percent in FY 88; the latter, at a

2.7 percent rate), she responded that El Salvador is a country where the government "promotes democracy and direct elections are permitted."

In what was seen as a signal of more active oversight of asylum policy, Morrison mentioned that he plans to hold a separate hearing on whether INS detention policy discriminates against certain alien groups. He also said that he and three other Congressmen had written a letter to President Bush requesting emergency consultations to increase the number of refugees admitted to the United States in FY 89. (See lead article.)

Private Witnesses Challenge Government Claims Three immigration attorneys working closely with Central American asylum seekers strongly challenged the government's claim that the expedited asylum hearings were fair.

Linda Yanez, a private attorney in Brownsville, Texas, said that the Central Americans arrive hungry and frightened, yet are treated by the INS examiners in a humiliating and intimidating manner.

Linton Joaquin, staff attorney with the Central American Refugee Center (CARECEN) in Los Angeles, said, "We have interviewed dozens of Central Americans with strong asylum claims who never had the chance to fully present their claims." He noted, "The large majority of applicants both in Los Angeles and Texas are not represented by attorneys and not familiar with which facts and evidence might be relevant to support their claims."

He said that it was particularly important that interviewers attempt to elicit all relevant information from unrepresented applicants. "Instead," he said, "the adjudicators themselves admit that the average interview lasts only fifteen minutes, and this includes taking biographical information from the applicant." Joaquin said that interviews lasting from 5-to-10 minutes are not uncommon, even in cases that are not deemed "frivolous".

He challenged Commissioner Nelson's assertion that the INS officers adjudicating these claims have received additional training in asylum law and in current country conditions.

He cited the case of a senior INS interviewer in Los Angeles who in deposition testimony identified the President of El Salvador as "Ortega" and admitted he did not know the name of the political party in power there.

"Typically," he said, "no attempt is made to probe the applicant for information beyond the face of the asylum application, which is awkwardly worded and nowhere calls for an applicant to present his or her reasons for leaving the home country."

Robert Rubin, managing attorney of the National Refugee Rights Project in San Francisco, acknowledged that the new INS policies will result in quick deportations for persons with frivolous asylum claims. "In their broad sweep, however," he suggested, "these policies cannot avoid subjecting many other persons with bona fide asylum claims to sham adjudications in which there is scant possibility of being able to express the real fears and trauma they have experienced."

Once Policy Is Announced, Critic Charges, Virtually No Individual Exceptions Allowed Rubin, who was the lead counsel in the lawsuit that brought about the January temporary restraining order (see Refugee Reports, Vol. X, No. 1), blasted the INS for its failure to make humanitarian exceptions to its no travel policy. He said that the INS claimed initially that travel restrictions would not apply to applicants when "necessary to unify immediate relatives or to meet overriding humanitarian...concerns."

However, Rubin cited specific cases that contradicted the INS's claim. He cited the case of a 69-year-old Nicaraguan woman who testified under oath how she waited for several days outside the INS office before being allowed to submit her asylum application, only to be told that she lacked the necessary fingerprint chart. Forced to walk four miles to the police station to obtain the fingerprints, she returned to the INS office and spent another three nights sleeping on a piece of cardboard awaiting her interview. When she finally was interviewed, Rubin said, she described how her property had been confiscated in Nicaragua due to her political beliefs. She also told the INS that she had a daughter lawfully residing in California, with whom she intended to stay. The INS refused to grant the request to transfer her case and confined her to the south Texas area, he said.

Rubin said that such cases are illustrative of the INS's general failure to make case-by-case determinations when a policy is adopted with a particular goal in mind. "The stated goal of the travel restriction policy was to deter the filing of frivolous asylum claims," said Rubin. "Once stated, it colored each adjudication conducted by the agency and essentially precluded an objective assessment of the individual case."

Rubin said that the INS was ultimately forced to concede in litigation that not a single humanitarian exception was granted despite "numerous requests."

He termed the latest immediate detention policy with quick adjudications a "self-fulfilling prophecy" resulting in the rejection of virtually all claims.

Policy Recommendations Several panelists, including members of Congress, made far-reaching policy recommendations, including legislative proposals. Rep. Romano L. Mazzoli (D-Ky.) announced that he and Rep. Hamilton Fish, Jr. (R-N.Y.) had just re-introduced a bill establishing statutory guidelines for granting temporary safe haven (see Refugee Reports, Vol. VIII, No. 11 and Vol. IX, no. 10).

Several of the private witnesses endorsed the idea of temporary safe haven, at least for Salvadorans and Nicaraguans. But the testimony of the General Accounting Office (GAO) endorsing this legislation came as a surprise to observers. "The Safe Haven legislation passed by the House of Representatives during the last session of Congress appears to us to be a practical and humane approach to dealing with the U.S. immigration issues posed by Central America," said Nancy R. Kingsbury, director of foreign economic assistance issues in the GAO's National Security and International Affairs Division. She said, "A 'get tough' policy by the INS regarding asylum applications may have an impact on reducing the number who apply, but does not have an impact on the very severe conditions that are motivating Central Americans to come to the United States and thus may not reduce the number of illegal Central American aliens entering our country."

INS Commissioner Nelson strongly opposed granting safe haven or extended voluntary departure (EVD)--a temporary withholding of deportation exercised under the Attorney General's discretion. He said, "There's no such thing as a temporary refugee."

Dan Stein, executive director of the Federation for American Immigration Reform (FAIR), supported the INS position, saying, "Special administrative statuses such as EVD and Safe Haven only compound the problem of illegal immigration, especially if granted to frivolous asylum seekers." He said that EVD sets the stage for mass movements, and is part of the problem rather than part of the solution.

FAIR called upon Congress to reverse the standard of a well-founded fear of persecution that was affirmed by the Supreme Court's Cardoza-Fonseca decision. "Asylum applications should be granted only where the applicants can show it is 'more likely than not' the applicant will suffer persecution, a higher burden than the current 'mere probability' [sic] standard."

Stein also said that asylum claims should only be accepted from aliens who had not passed through "any country where a claim for consideration as a refugee could be filed with a U.S. consulate or an international agency," a position that would preclude all overland asylum seekers from Central America. Stein also recommended that asylum applications not be accepted from aliens who enter the United States illegally, absent good cause, and that asylum applicants denied by an INS district director be barred from renewing their asylum claims before immigration judges in deportation proceedings, unless the alien could demonstrate changed circumstances or previously unavailable evidence.

Rick Swartz, president of the National Immigration, Refugee, and Citizenship Forum, argued in favor of safe haven legislation introduced by Rep. Joe Moakley (H.R. 45), which would grant a temporary stay of deportation for Salvadorans and Nicaraguans. He said that the migration of Central Americans should be understood in the context of flight from war and that EVD would promote U.S. foreign policy and national security interests. He cited a letter from El Salvador's President Napolean Duarte in support of the Moakley/DeConcini bill, which said, "My fundamental objective has been to introduce democracy and restore peace to my country... I am convinced that temporary safe haven is the single most important initiative the U.S. can now take to help my

nation achieve this aspiration."

Doris Meissner, senior associate of the Carnegie Endowment for International Peace, said that a case could be made for EVD on foreign policy grounds "if a genuine effort toward peace in the region were underway and the agenda was to back up diplomacy and political change with the economic recovery initiatives that are so desperately needed in the region."

However, she said, such a shift in U.S. foreign policy has yet to occur, so that "EVD will serve only to weaken legitimate immigration control further." She said that granting permission to work would also strengthen the magnet effect and increase migration.

Meissner was critical of the INS--of which she formerly was the acting commissioner--for choosing actions that have been "sensational and crisis-oriented" in response to a situation that has been building for at least a year.

She said that the immigration service's "mishandling and neglect of the asylum responsibility has been chronic, predating IRCA by at least five years."

She charged that asylum decisions reflect foreign policy biases. "Poles, for example, who are members of Solidarity receive asylum virtually automatically, while Salvadorans who were active in teachers' unions or peasant cooperatives are routinely denied for lack of evidence of persecution."

She criticized asylum interviews, saying they are brief and devoted to seeing that forms are correctly filled out, rather than probing the line separating political from economic migration.

Although saying that she had always believed that asylum adjudications properly fell within the purview of the INS, Meissner reported that she had seen too many attempts at internal reform fail. "I have reluctantly concluded," she said, "that the asylum mandate will not be properly carried out unless it is removed from the hands of both INS and the Department of State."

Meissner suggested the development of a corps of specially trained asylum officers, supported by a refugee documentation center, under the Executive Office of Immigration Review in the Department of Justice.

"The sad irony," said Meissner, "is that if we had been more circumspect some years ago, when the vulnerabilities of the system first became evident, and had made the investments that were needed, we would very likely not be experiencing the widening breakdowns that we face today. Instead, the quick-fix responses of the past have, over the long term, resulted only in a weakened ability to respond to growing flows." She said that this pattern is being repeated today.

Meissner said that effective immigration control and deterrence "flows not from the threat of border police and detention centers," but rather from knowledge that decisions will be made quickly and fairly and that repatriation will follow for those found to be unqualified. Meissner concluded, "Until the political asylum decision system faithfully conveys these verities, today's debate is likely to be one more round of saber-rattling over a problem where we have continued to be content with a system that is ineffective and sullies sacred national principles because we have been unwilling to take steps that are needed to correct it."

ALIENS HAVE RIGHT TO FREE SPEECH, PART OF IMMIGRATION LAW FOUND UNCONSTITUTIONAL

A U.S. district judge has ruled that aliens lawfully in the United States have First Amendment rights and that parts of the Immigration and Nationality Act (INA) are unconstitutional.

The case, American-Arab Anti-Discrimination Committee v. Meese, came about as a result of deportation hearings against seven Palestinians and a Kenyan accused of being members of the Popular Front for the Liberation of Palestine (PFLP). The government held that their membership in the PFLP made them deportable because the organization distributes literature advocating world communism (see Refugee Reports, Vol. VIII, No. 6). These provisions of the immigration law are holdovers from the McCarthy-era McCarren-Walter Act of 1952.

Following the constitutional challenge, the Immigration and Naturalization Service (INS) dropped the subversion charges, but continued to seek the aliens' deportation by charging six nonimmigrants with visa violations and the other two, who are permanant resident aliens, with violating another section of the law that prohibits

affiliation with organizations advocating "the unlawful damage, injury, or destruction of property."

The government had argued that in the limited context of deportation "the guarantees of the Bill of Rights are constitutionally irrelevant to the question of which non-citizens shall be permitted to remain within our borders."

On January 26, U.S. District Judge Stephen V. Wilson issued a written decision that cited a Supreme Court ruling (Kwong Hai Chew, which, in turn, cited a concurrence in Bridges v. Wixon) saying, "The Bill of Rights is a futile authority for the alien seeking admission for the first time to these shores. But once an alien lawfully enters and resides in this country, he becomes invested with the rights guaranteed by the Constitution to all people within our borders."

Judge Wilson ruled that "it is impossible to adopt for aliens a lower degree of First Amendment protection solely in the deportation setting without seriously affecting their First Amendment rights outside that setting."

Government Attempts to Stem Free Flow of Ideas, Judge Rules Judge Wilson said, "In this case, the government is trying to stifle certain ideas from entering our society from certain aliens through its immigration power." He said, "Our society, however, was built on the premise that only through the free flow of ideas can our nation grow and prosper."

Looking at the specific provisions of the INA being challenged, the court held that they violated the First Amendment because they were "substantially overbroad." Those provisions, Judge Wilson found, "proscribe almost exclusively activity protected by the First Amendment." He noted, "Simply writing, publishing, circulating, distributing, printing, displaying, and possessing material advocating or teaching the prohibited ideologies cannot be equated with advocacy of imminent unlawful action."

Judge Wilson ruled that INA sections 241(a)(6)(D), (F)(iii), (G)(v), and (H) violate the First Amendment. The first two of these sections, he said, "could as easily be applied to prohibit an alien from wearing a PFLP button, attending a PFLP lecture, distributing a PFLP newspaper, or teaching a PFLP viewpoint as they could be employed to prevent advocacy of imminent lawless action."

Ruling Called "Landmark Constitutional Decision" The editors of the immigration law weekly, Interpreter Releases, commented, "This is a landmark constitutional decision. If ultimately upheld, it would have far-reaching implications for the First Amendment rights of both nonimmigrant and immigrant aliens in the U.S. In view of the tenor of past Supreme Court decisions on the constitutionality of the Communist deportation provisions, it would be surprising if the Attorney General did not seek direct review of this decision by the Supreme Court."

The editors pointed out that the decision is "unfortunate" in that it applies only to aliens "lawfully residing in the United States," which would leave undocumented aliens in the lurch, and suggests that their omission might have been "a slip of the pen."

Marc Van der Hout, an attorney representing the Palestinians, said that an immigration judge suspended the deportation hearing for the two permanent residents on March 15 pending final outcome of the case, but denied the motion of continuance for the others. Van der Hout suggested that further litigation will challenge electronic surveillance of this group, including conversations between them and their attorneys.

The government is expected to appeal the decision, but has not yet formally indicated that it will do so. "I am hopeful that if this goes to the Supreme Court, or through legislative initiatives, that this ridiculous exclusion based on ideology will be dropped," Van der Hout said. "Excluding drug dealers or criminals is one thing, but this country is based on free speech and the free exchange of ideas. The judge's decision is 100 percent correct on the law."

Legislative Approaches During the life of this case, Congress has stepped in to extend First Amendment protection to aliens, but with mixed results. In 1987, the Foreign Relations Authorization Act was amended (section 901) to grant aliens the same First Amendment rights as U.S.

citizens. But section 901(b) made an exception for membership in the Palestine Liberation Organization PLO (of which the PFLP is a part). In 1988, section 901 was amended, limiting its protection to non-immigrants.

In his oral opinion--when he was ruling only on rights of the two permanent resident aliens--Judge Wilson had ruled that section 901(b), which excepted PLO members from First Amendment rights, was unconstitutional. Later, however, in his written opinion, he expanded his ruling to both immigrants and nonimmigrants. Therefore, he dropped the ruling on the constitutionality of 901(b) because it deals only with nonimmigrants.

Rep. Barney Frank (D-Mass.) has reintroduced a bill, H.R. 1280, which amends the INA itself, striking these and other McCarren-Walter provisions. So far, 56 other House members have signed on as co-sponsors of the bill.

Resources

CHILDREN OF THE STONES

"Children of the Stones" is the name given to young Palestinians who for more than a year have been battling Israeli security forces in the West Bank and Gaza Strip.

The American-Arab Anti-Discrimination Committee (ADC) has recently published an issue paper of the same name, comprised largely of affidavits and photographs telling the story of the Palestinian uprising--the Intifida--from the perspective of these youths.

The uprising, which began in December 1987, draws its strength from the shebab, young people, many of whom have been born and raised in refugee camps and who have lived their entire lives under Israeli occupation.

Although the accounts in "Children of the Stones" do not always distinguish between registered refugees and other Palestinians, many of the human rights abuses reported are directly linked to refugee camps. A detailed account is given of the strict curfew in the Jabalya Refugee Camp in Gaza from December 1987 through mid-January 1988. "Anyone caught on the street risked severe beating and arrest," said the report. "Researchers observed an elderly asthmatic woman attempting to reach the UNRWA clinic who was apprehended by a military patrol. The soldiers insulted the woman with profane language and struck her three times on her back with a wooden truncheon."

Rasha Houshiyyeh, a four-year-old from Ramallah, blinded by a rubber bullet.
Beverly Orr, Children of the Stones

Although stone and molotov cocktail throwing clearly can be life-threatening, Military Order No. 62 empowers the military authorities to arrest any resident of Gaza not only for these activities, but also for writing slogans on walls, singing nationalist songs, possessing nationalist literature, raising the Palestinian flag, making a "V-for-victory" sign with the hand, or wearing or otherwise displaying the colors of the Palestinian flag, according to the report. Many children, as young as nine and ten years old, are arrested in blanket sweeps, according to the report, and held in incommunicado detention for as long as 18 days. "Israeli military prison personnel beat children and youths imprisoned there with fists, sticks, wires, wooden truncheons which are sometimes modified with nails and metal strips, iron rods and other bludgeoning instruments," says the report.

The 49-page paper, including many affidavits and statements from those who were beaten or otherwise mistreated, is available for $3 from the ADC, 4201 Connecticut Ave., NW, Suite 500, Washington, DC 20008. (202) 244-2990.

ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATION BY STATE AND SOCIAL SERVICE ALLOCATIONS FOR FY 1989

STATES	3-YEAR POPULATION*	PROPOSED ALLOCATION	MAA INCENTIVE ALLOCATION
Alabama	493	$ 126,042	$ 5,963
Arizona	2,226	569,108	26,926
Arkansas	398	101,754	5,000
California	80,971	20,701,382	979,429
Colorado	1,896	484,739	22,934
Connecticut	2,190	559,904	26,490
Delaware	58	75,000	5,000
District of Columbia	562	143,683	6,798
Florida	5,581	1,426,862	67,508
Georgia	2,649	677,254	32,042
Hawaii	785	200,696	9,495
Idaho	508	129,877	6,145
Illinois	7,624	1,949,183	92,220
Indiana	498	127,321	6,024
Iowa	1,657	423,635	20,043
Kansas	1,553	397,046	18,785
Kentucky	759	194,069	9,181
Louisiana	1,871	478,348	22,632
Maine	550	140,615	6,653
Maryland	3,209	820,426	38,816
Massachusetts	9,211	2,354,923	111,417
Michigan	3,617	924,737	43,751
Minnesota	6,928	1,771,241	83,801
Mississippi	243	75,000	5,000
Missouri	1,878	480,137	22,716
Montana	141	75,000	5,000
Nebraska	497	127,065	6,012
Nevada	832	212,713	10,064
New Hampshire	250	75,000	5,000
New Jersey	3,289	840,879	39,784
New Mexico	297	75,932	5,000
New York	16,889	4,317,912	204,290
North Carolina	1,391	355,629	16,826
North Dakota	200	75,000	5,000
Ohio	2,145	548,409	25,946
Oklahoma	932	238,279	11,274
Oregon	2,368	605,413	28,643
Pennsylvania	5,370	1,372,916	64,956
Rhode Island	1,230	314,467	14,878
South Carolina	188	75,000	5,000
South Dakota	215	75,000	5,000
Tennessee	1,996	510,306	24,144
Texas	9,800	2,505,509	118,541
Utah	1,305	333,642	15,785
Vermont	283	75,000	5,000
Virginia	4,980	1,273,207	60,238
Washington	7,205	1,842,060	87,152
West Virginia	20	75,000	5,000
Wisconsin	4,274	1,092,709	51,698
Wyoming	11	75,000	5,000
TOTAL	204,023	52,500,000	2,500,000

*Estimate of refugee/entrant population who have resided in the United States 3 years or less.

NOTE The following are the proposed Targeted Assistance allocations by State for FY 89: California, $15,614,025; Colorado, $149,404; Florida, $13,444,827; Illinois, $257,603; Kansas, $184,158; Louisiana, $41,936; Massachusetts, 617,905; Minnesota, $709,566; Missouri, $23,856; New Jersey, $83,153; New York, $1,173,201; Texas, $187,266; Utah, $91,086; Washington, $1,074,014.

Source: Office of Refugee Resettlement.

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